



PATENT APPLICATION

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Manabu SAITO et al.

Application No.: 10/827,323

Filed: April 20, 2004

Docket No.: 113539.01

For: IMAGE FORMING APPARATUS AND PROCESS CARTRIDGE USED IN THE
SAME

PETITION UNDER 37 C.F.R. §1.53(e)(2)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This petition is submitted in response to the October 1, 2004 Patent Office communication and in further response to the June 30, 2004 Notice of Missing Parts in a Non-Provisional Application (copy attached). For the reasons discussed in detail below, it is submitted that Figure 18 should be included in the application and the application should be granted the original filing date of April 20, 2004 because Figure 18 and its subject matter are disclosed in the parent application, i.e., U.S. Patent Application No. 10/226,305, which was incorporated by reference in its entirety in the above-identified application. In the parent, current Figure 18 is numbered as Figure 10.

Background

This application was filed in the U.S. Patent and Trademark Office on April 20, 2004. Attached to this Petition as Appendix A is a copy of the U.S. Patent and Trademark Office acknowledgement of receipt bearing the date stamp of April 20, 2004. Furthermore, attached to this Petition as Appendix B is a copy of page 1 of the above-identified application which clearly discloses that the entire disclosure of the Parent, i.e., U.S. Patent Application No. 10/226,305, is incorporated by reference in its entirety.

In view of the foregoing, it is respectfully submitted that, the subject matter of Figure 18 is included in this application for at least the reason that it has been incorporated by reference at the time of filing of this application.

10/29/2004 SDENB001 00000015 10827323

130.00 OP

01 FC:1460

Relief Requested

The U.S. Patent and Trademark Office is respectfully requested to:

- 1) Withdraw the Notice of Omitted Items;
- 2) Agree to insert Figure 18 into the current application; and
- 3) Accord this application a filing date of April 20, 2004 including Figure 18.

For the convenience of the Patent Office, a copy of Figure 18 is attached as Appendix E so that the complete application can be processed for substantive examination.

Although it is believed that Figure 18 was subsequently misplaced after it was filed on April 20, 2004, attached is our Check No. 160058 in the amount \$130.00 for the petition fee under 37 C.F.R. §1.117(h). Furthermore, the U.S. Patent and Trademark Office is authorized to debit Deposit Account No. 15-0461 in the amount necessary to effect the filing of this Petition.

The appropriate official of the U.S. Patent and Trademark Office is invited to contact the undersigned if there are any questions regarding this matter.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

Tarik M. Nabi
Registration No. 55,478

JAO:TMN/tje

Attachments:

- Appendix A - Copy of U.S. PTO Acknowledgement
of Receipt dated April 20, 2004
- Appendix B - Copy of Page 1 of U.S. Patent Application No. 10/827,323
- Appendix C - Notice to File Missing Parts in a Non-provisional Application
- Appendix D - October 1 U.S. Patent and Trademark Office Response
- Appendix E - Figure 18 of current application

Date: October 28, 2004

OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>

PTO RECEIPT FOR FILING OF PAPER

► Mail Room (Regular Delivery)

The following papers have been filed:

Rule 53(b) Continuation-In-Part transmittal w/ chk. no. 153295 (\$1,398), *Appdata* Petition for Extension of Time w/ chk. no. 153318 (\$950); application (33 pp. spec./31 claims/Abstract); 20 sheets drawings (Figs. 1-22); Information Disclosure Statement; PTO-1449

Name of Applicant: Manabu SAITO et al.

Serial No.: New Rule 53(b) CIP App.

Atty. File No.: 113539.01

Title (New Cases): IMAGE FORMING APPARATUS AND PROCESS CARTRIDGE USED
IN THE SAME

Sender's Initials: JAO:TMN/dmw 15364 U.S. PTO
10/827323

ASSIGNEE: Fuji Xerox Co., Ltd.



042004



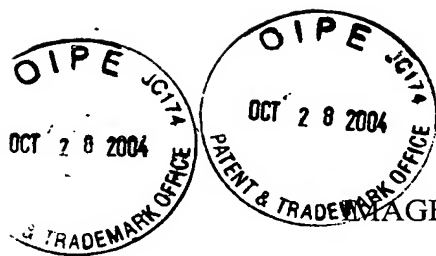


IMAGE FORMING APPARATUS AND PROCESS CARTRIDGE
USED IN THE SAME

[0001] This is a Continuation-in-Part of Application No. 10/226,305 filed August 23, 2002, which claims the benefit of Japanese Patent Application No. JP 2001-388372 filed December 20, 2001, and is a Continuation-in-Part of Application No. 10/367,881 filed February 19, 2003, which claims the benefit of Japanese Patent Application No. JP 2002-270050 filed September 17, 2002. The entire disclosure of the prior application is hereby incorporated by reference herein in its entirety.

BACKGROUND OF THE INVENTION

1. Field of Invention

[0002] The present invention is related to an electro-photographic type, or other types of image forming apparatus, and a process cartridge employed in this image forming apparatus.

2. Description of Related Art

[0003] As this sort of image forming apparatus, such an image forming apparatus is known in which while a recording medium is transported along a substantially vertical direction, an image is formed on this transported recording medium, and then, the recording medium on which the image has been formed is ejected to an ejection unit provided on an upper portion of a main body of this image forming apparatus as disclosed in JP-A-10-207160.

[0004] As previously explained, in such a type of image forming apparatus that the recording medium is transported along the vertical direction, a dead space may be readily formed at a lower portion of the ejection unit. In other words, for instance, in an electro-photographic type image forming apparatus, a developing apparatus is arranged under a vertical transport path, and also, a fixing apparatus is arranged above the vertical transport path, respectively. As a result, a lower portion of an ejection unit, which is extended from the fixing apparatus to a side direction while being inclined, may constitute a dead space.

[0005] Also, in an electrophotographic machine as a typical example of this type of image forming apparatus, a latent image is formed on an image carrying bodies such as a photosensitive drum, by a scanning light beam emitted from an optical unit, for example. The latent image is visualized (developed) by using the developer, and transferred onto a recording sheet, such as a recording paper.

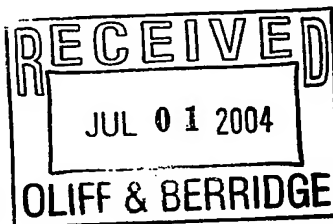


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/827,323	04/20/2004	Manabu Saito	113539.01

25944
OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320



CONFIRMATION NO. 4040
FORMALITIES LETTER
OC000000013106669
OC000000013106669
MISSING PARTS
Date Mailed: 06/30/2004

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

DUE DATE

Filing Date Granted

AUG 30 2004

Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is missing.
A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

The following item(s) appear to have been omitted from the application:

DOCKETED
By MPX on 7/1 2004
and
By JMM on 7/1 2004
Oliff & Berridge

- Figure(s) 18 described in the specification.

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$130.00 petition fee (37 CFR 1.17(h))) with evidence of such deposit **must** be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if it is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the \$130.00 petition fee (37 CFR 1.17(h))) requesting the later filing date **must** be filed within **TWO MONTHS** of the date of this Notice.

Applicant is advised that generally the filing fee required for an application is the filing fee in effect on the filing date accorded the application and that payment of the requisite basic filing fee on a date later than the filing date of the application requires payment of a surcharge (37 CFR 1.16(e)). To avoid processing delays and payment of a surcharge, applicant should submit any balance due for the requisite filing fee based on the later filing date

being requested when submitting the omitted items(s) and the petition (and petition fee) requesting the later filing date.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b).** In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any relabeled drawing figures, is required. A copy of the drawing figures showing the proposed changes in red ink should accompany with any drawing changes. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **\$130** for a Large Entity

- **\$130** Late oath or declaration Surcharge.

Replies should be mailed to: Mail Stop Missing Parts
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*



Customer Service Center

Initial Patent Examination Division (703) 308-1202

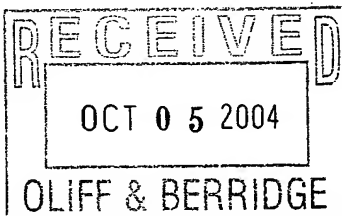
PART 2 - COPY TO BE RETURNED WITH RESPONSE



UNITED STATES PATENT AND TRADEMARK OFFICE



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OCT 01 2004

In re Application of
Saito, et al.

Application No. 10/827,323

Received April 20, 2004

Docket No.: 113539.01

: ON PETITION OFFICE OF PETITIONS

DUE DATE

DEC 01 2004

This is a decision on the "PETITION UNDER 37 CFR § 1.53(e)(2) - THE APPLICATION WAS COMPLETE AS FILED ON OCTOBER 14, 2003," filed August 30, 2004, wherein petitioners request withdrawal of the Notice of Omitted Items; acknowledgement that Fig. 18 was received on April 20, 2004; and a filing date of April 20, 2004 with Figure 18 as part of the original disclosure.

The petition is **DISMISSED**.

The application was received by the USPTO on April 20, 2004. On June 30, 2004, a Notice to File Missing Parts of Nonprovisional Application ("Notice") was mailed indicating, *inter alia*, that the application had been accorded a filing date but that figure 18 appeared to have been omitted from the application as filed.

The Notice permitted applicant to either: (1) promptly establish prior receipt in the PTO of the omitted items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the items in question were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted items and accept the date of such submission as the application filing date must file any omitted items with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

DOCKETEDBy Jmm on 10/6 2004By KTG and on 10/6 2004

Oliff & Berridge

Petitioners argue that the application as filed included figures 1-22 and has included as proof of mailing and proof of receipt a copy of an acknowledgement of receipt and postcard indicating that figures 1-22 were received in the Office.

The argument and evidence submitted by petitioners has been considered, but are not persuasive. The USPTO file is the official record of the papers originally filed in this application. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

Review of the official application reveals that, as indicated on the return postcard and acknowledgement of receipt, the Office did in fact receive twenty (20) sheets of drawings. Figure 18, however, does not appear on any of the drawing sheets received. Figures 1-13, 16-17, and 19-22 appear singly on separate drawing sheets (nineteen total drawing sheets). Figures 14(a), 14(b), and 15 appear on one single drawing sheet (one total drawing sheet). Hence, the Office received a total of twenty (20) sheets of drawings. Figure 18, however, was omitted.

Thus, the postcard and acknowledgement of receipt do not serve as prima facie evidence of receipt of Figure 18.

As the relief requested by petition has been dismissed, petitioners are advised that the instant application is being returned to the Office of Initial Patent Examination with a filing date of April 20, 2004 without entry of Fig. 18 as part of the disclosure. Petitioners are advised to promptly submit a preliminary amendment canceling reference to Fig. 18 prior to the issuance of the first Office action on the merits.

Any petition for reconsideration of this decision must be submitted within **TWO (2) MONTHS** of the mail date of this decision. If petitioners desire to have Fig. 18 entered into the record, a petitioner for reconsideration requesting the later filing date of August 30, 2004 (date of submission of Fig. 18) and entry of Fig. 18 must be submitted within **TWO (2) MONTHS** of the mail date of this decision. The time period for requesting reconsideration may not be extended pursuant to 37 CFR 1.136. (37 CFR 1.181(f))

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

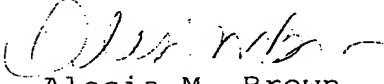
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By hand or delivery: U.S. Patent and Trademark Office
service(FedEx, UPS, 220 20th Street S.
DHL, etc.) Customer Window, **Mail Stop Petition**
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

This application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of April 20, 2004 without entry of Fig. 18.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Fig. 18

